



DNFSB/misc-029

94-0003430

Natural Resources
Defense Council

1350 New York Ave., N.W.
Washington, DC 20005
202 783-7800
Fax 202 783-5917

Public Reading Room
U. S. Department of Energy
Idaho Operations Office

July 5, 1994

The Honorable John T. Conway
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue, N.W., Suite 700
Washington, D.C. 20004

Dear Mr. Chairman:

Pursuant to 42 U.S.C. § 2286d(a), the Natural Resources Defense Council ("NRDC") submits the following comments on Recommendation 94-1, which was dated May 26, 1994 and published in the Federal Register on June 3, 1994. See 59 Fed. Reg. 28,848 (June 3, 1994).

By issuing its recommendation, the Board has drawn additional attention to the potential safety risks posed by the irradiated nuclear reactor fuel and targets and the plutonium- and uranium-bearing solutions present at a number of sites of the Department of Energy's nuclear weapons complex. By focusing additional attention on these potential safety risks, the Board's recommendation has performed a valuable service.

But we believe, respectfully, that on the whole the Board's recommendation is a disappointing and inadequate document. It is inadequate in at least three ways:

- * It is bereft of data or meaningful analysis to support its very general conclusion that the radioactive materials addressed in the recommendation may pose an immediate safety issue and thus warrant accelerated treatment.
- * The conclusions contained in the recommendation conflict in at least one critical way with the April 1994 issue paper on plutonium storage safety prepared by the Board's staff and outside consultants.
- * The recommendation fails to address the crucial and interrelated issues of what specific methods should be used to address the safety concerns and how the Department should carry out its duties under the National Environmental Policy Act while addressing these safety concerns.

We discuss each of these three areas below.

1. Lack of Data or Analysis

Recommendation 94-1 presents no data to support its very general conclusion that "imminent hazards could arise within two or three years unless certain problems are corrected." 59 Fed. Reg. at 28,849. Nor does it present any significant analysis explaining the basis and rationale for its assertions. For example: the conclusion just quoted is based on "observations and discussions with others," id., but these observations are not specified. Nor does the Board explain who the "others" are that it has discussed the potential imminent hazards with. These omissions are particularly disappointing in light of a number of assertions contained in the recommendation that fairly cry out for elaboration or analysis. To cite just one example: The recommendation states that the K-East Basin at Hanford "is likely to leak again," id., a prediction that seems susceptible to quantification or at least to elaboration of the Board's conclusion that leakage is "likely" as opposed to merely possible or probable. Yet the Board provides no such analysis or information in its recommendation.

The highest and best use of the Board's resources is to produce hard, detailed analysis and data to support its safety-related conclusions and to serve as the basis for informed discussion by the public and informed action by the Department of Energy. Where the Board's work product is primarily conclusory statements without significant data or analytic support, its authority ebbs. Moreover, a conclusory and vague Board recommendation leaves an open field for advocates within the Department to "spin" the recommendation to advance their position in intra-departmental debates -- as the advocates of immediate restart of reprocessing operations at the Savannah River Site's F-Canyon are currently using Recommendation 94-1.

2. Conflicts With April 14 Issue Paper

In at least one important respect, Recommendation 94-1 is in basic conflict with a far more detailed study prepared by the Board's staff and outside consultants in April and transmitted by you to the Department of Energy four days after Recommendation 94-1 was published in the Federal Register. See Letter from John Conway to Tara O'Toole, June 7, 1994, transmitting "Plutonium Storage Safety at Major Department of Energy Facilities" ("Plutonium Storage Safety"), April 14, 1994.

Of the materials referenced in Recommendation 94-1, the Board singles out the plutonium-bearing solutions at the Savannah River Site as an "especially urgent" problem warranting attention

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on an expedited basis. 59 Fed. Reg. at 28,849. In apparent conflict with this conclusion, however, the April 14 report concludes that these solutions have not yet become "serious safety risks." Plutonium Storage Safety at 6.¹ The April 14 report also concludes that the Rocky Flats Plant is "the one site with serious, immediate problems in dealing safely with its [plutonium] inventory," id. at 2 (emphasis added) -- a conclusion that by its terms excludes the Savannah River Site as presenting serious, immediate safety concerns due to its plutonium inventory.

The unsupported conclusion in Recommendation 94-1 that the Savannah River solutions pose an "especially urgent" problem is contradicted by the analysis presented in the Board's April 14 issue paper.

3. Mapping a Strategy to Address Safety Concerns

In addition to providing detailed, reliable analysis and data on the safety situation at the weapons complex, the most important contribution the Board can make is to address directly important policy issues that arise concerning safety-related matters at the complex. The Board has failed to do so here, except in the most general way.

The key issue for debate concerning the materials addressed in the Board's recommendation is not whether they warrant attention but rather how they should be managed and treated. Of special importance is a full and fair analysis of the alternative methods that exist for transforming these materials into forms suitable for long-term storage or treatment. We appreciate and acknowledge the Board including in its list of recommendations a research program designed to give the Department the information it needs to choose among alternative methods for addressing these fissile materials, see recommendation two, 59 Fed. Reg. at 28,849, but we believe stronger words in this direction are needed. As the Board knows, the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., provides the statutorily mandated vehicle for performing the alternatives analysis the Board advocates. Particularly in light of efforts on the part of certain DOE officials to restart F-Canyon prior to completion of the in-progress environmental

¹ The April 14 report speaks (at 6) of treating the solutions "before they develop into serious safety risks" (emphasis added) -- language indicating that the solutions do not yet pose serious risks. The report also concludes that "[t]he plutonium in storage [at the Savannah River Site] may be relatively safe for now" Id.

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impact statement, we urge the Board to address more directly the need for full alternatives analysis and full compliance with the NEPA process as the Department moves to address the materials discussed in Recommendation 94-1.

4. Conclusion

The Department of Energy is at a turning point. With its weapons production mission dormant, the Department now must move to address the health, safety, and environmental problems left as the legacy of the Cold War. These new challenges call for a fresh look at how the Department does business.

Unfortunately, some within the Department appear intent on returning to old ways of doing things. An effort is underway by the Savannah River Site and the Office of Defense Programs to restart reprocessing operations at F-Canyon before completing an alternatives analysis and an in-progress environmental impact statement ("EIS"). This effort is trumpeting safety as its reason for proceeding, and it is now using Recommendation 94-1 as ammunition for its case. While we take safety very seriously and are willing to be persuaded that safety reasons demand restart of F-Canyon, the DOE advocates of restart have produced no hard data or persuasive analysis demonstrating either that safety concerns mean action cannot await completion of the EIS or that reprocessing is the best way to address these concerns from a safety, an environmental or a nonproliferation standpoint. Willfully or not, the Board's recommendation has played into the restart-advocates' case by stressing safety concerns but neither detailing them, supporting them, nor providing a substantive and responsible roadmap for addressing them.

We ask the Board to remain cognizant of how a recommendation that is perceived as saying simply "Take action now!" can be used by those who seek to return to old ways of doing business -- ways which, because of their familiarity, can seem to be the easiest and quickest to implement. We appreciate the opportunity to comment on the Board's recommendation, and we look forward to working with the Board to make the nuclear weapons complex a safer, more forward-looking place.

Sincerely,



Andrew P. Caputo
Attorney

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cc: Secretary of Energy O'Leary
Under Secretary of Energy Curtis
Assistant Secretary of Energy Grumbly
Assistant Secretary of Energy O'Toole
Assistant Secretary of Energy Reis